TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible]

No. 115.

THE WABASH RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALEXANDER FLANNIGAN AND VIRGIL [illegible],

IN ERROR TO THE ST. LOUIS COURT OF APPEALS OF THE STATE OF MISSOURI.

FILED [illegible], [illegible].

(16,643)

(18,646.)

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STATE OF MISSOURI, *ss:*

Be it remembered, that heretofore, to-wit, on the 2nd day of August, 1901, there was filed in the office of the clerk of the St. Louis court of appeals the following certificate:

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Be it remembered, that heretofore, to-wit: at the April term, A. D. 1901, of the circuit court, city of St. Louis, within and for the city and State aforesaid, and on the twnety-ninth day of April 1901, it being the 22nd day of said April term, 1901, of said court, the following proceeding was had in cause No. 19159, series A, of the causes in said court, wherein The Wabash Railroad Company, interpleader, is plaintiff and Alexander Flannigan *et al.*, are defendants, to-wit:

MONDAY, *April 29th*, 1901.

WABASH RAILROAD COMPANY, Interpleader,
vs.
ALEXANDER FLANNIGAN and VIRGIL RULE. } (19159–*a.*)

Now at this day come the parties herein by their respective attorneys, and the order issued herein on April 15th, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them, coming on for hearing upon the pleadings, affidavits and proofs adduced, and the court having duly considered the same, and being sufficiently advised of and concerning the premises, doth order that the prayer of plaintiff's bill be and is denied. It is further ordered by the court, that the restraining order granted against defendants on April 15th, 1901, be and is hereby dissolved.

And afterwards at the same April term, 1901, of the said court, the following further proceedings were had in said cause, to-wit:

MONDAY, *May 13th*, 1901.

THE WABASH RAILROAD COMPANY, Interpleader,
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a.*)

Now comes plaintiff by its attorney and files herein, an affidavit for appeal, and an appeal bond, which is approved by the court, and on its motion, an appeal is allowed it from the judgment herein, to the St. Louis court of appeals; and is allowed to and including June 3rd, 1901, to file its bill of exceptions.

TUESDAY, *May 28th*, 1901.

WABASH RAILROAD CO.
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a*.)

On motion of plaintiff by attorney, it is ordered by the court, that plaintiff be allowed until August 3rd 1901, to file its bill of exceptions.

And at the June term, 1901 of the said circuit court, the following proceedings were had in said cause, to-wit:—

WEDNESDAY, *July 24th*, 1901.

WABASH RAILROAD COMPANY
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a*.)

On motion of plaintiff by its attorney, it is ordered by the court, that plaintiff be allowed up to and including October 7th,
3 1901, to file bill of exceptions.

MONDAY, *July 29th*, 1901.

WABASH RAILROAD COMPANY
vs.
ALEXANDER FLANNIGAN ET AL. } (19159–*a*.)

Now comes the plaintiff by its attorney and presents to the court, its bill of exceptions herein, which is allowed, signed and sealed, ordered filed and made part of the record in this cause.

STATE OF MISSOURI, } *ss*:
City of St. Louis, }

I, Henry Troll, clerk of the circuit court, city of St. Louis, within and for the city and State aforesaid do hereby certify, that the above and foregoing, is a true, full and complete transcript of the judgment in the above-entitled cause, and showing the term, and day of the term, month and year in which the same was rendered; of the orders granting an appeal, and extending time for filing a bill of exceptions, and of the entry of filing said bill of exceptions in said cause, as fully as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at office in the city of St. Louis,
[SEAL.] this 3rd day of August, 1901.

HENRY TROLL, *Clerk*.

4 And afterwards, to-wit: on the said 2nd day of August, 1901, the plaintiff filed the following petition:

In the St. Louis Court of Appeals, State of Missouri. In Vacation.

THE WABASH RAILROAD COMPANY (a Corporation), Plaintiff,
vs.
ALEXANDER FLANNIGAN, VIRGIL RULE, JOSEPH DIECKMAN, Shreiff of the City of St. Louis, Missouri, and Henry Troll, Clerk of the Circuit Court of the City of St. Louis, Missouri, Defendants.

The plaintiff states that it is a corporation duly organized as a consolidated corporation under the laws of the States of Ohio, Illinois and Missouri as one corporation with capacity to sue and liable to be sued in said States;

That the defendant Joseph Dieckman, is the duly elected, qualified and acting sheriff of the city of St. Louis, Missouri, and that the defendant, Henry Troll, is the duly elected, qualified and acting clerk of the circuit court of the city of St. Louis. Missouri,

Plaintiff further states that on the — day of April, 1901, it filed in the circuit court of the city of St. Louis, Missouri, a petition in words and figures as follows:

5 In the Circuit Court of the City of St. Louis, State of Missouri, April Term, 1901.

Now at this day comes The Wabash Railroad Company, and by leave of court first had and obtained, for its third amended petition, states that it was, on the 1st day of August, 1889, ever since has been continuously, without any change whatever in its status as a corporation, and now is a consolidated corporation, first organized as such in the State of Ohio and subsequently organized as such in the States of Illinois and Missouri, and duly organized as a consolidated corporation under the laws of said States of Ohio, Illinois and Missouri, as aforesaid, and that it is one and the same corporation named and described in all of the preceding petitions filed in this cause, and is and always has been since August 1st, 1889, the same corporation named and described in the petition filed in this cause on the 20th day of December, 1900, as well as in the transactions herein described. And that in the State of Illinois it employs agents at its various stations within that State, who under the laws of that State are subject to have legal processes served upon them, which are directed against the plaintiff in said State, thereby serving personally this plaintiff with process.

The plaintiff further states that at some time about, or previous to the months of May and June, in the year 1891, this plaintiff, the same plaintiff described in the petition filed in this cause December 20th, 1900, had in its employ one Peter Tourville. While in the employ of said plaintiff, said Peter Tourville earned $81.98, more or less.

6 The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants in the above entitled cause, instituted an attachment proceeding against

Peter Tourville, before James H. Wyatt, a justice of the peace for St. Clair county, Illinois, who had jurisdiction both of the subject matter and the person of the defendant, and garnishee defendant in that cause, under article two, section one, paragraph sixteen of an act of the legislature of the State of Illinois, entitled "An act to revise the law in relation to justices of the peace and constables," approved June 26th, 1895, in force July 1st, 1895, which reads as follows:

"Justices of the peace shall have jurisdiction in their respective counties in the following cases, when the amount claimed does not exceed two hundred dollars. * * * In garnishment by attachment or summons, the amount of the claim of the garnishor, and not the amount of the answer of the garnishee, shall determine the jurisdiction."

On said first day of April, 1895, writ was returned duly executed, by summoning The Wabash Railroad Company, the plaintiff herein, as garnishee; on the fourteenth day of June 1895, judgment was rendered against The Wabash Railroad Company, garnishee defendant, in the sum of $81.98, and said judgment was not appealed from by said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against said Peter Tourville, defendant, and The Wabash Railroad Company, the plaintiff herein, as garnishee defendant, in the State of Illinois, and that it has at no time been paid, *in whole or in part.* That an appeal from said judgment would not have availed said Wabash Railroad Company, the plaintiff herein, anything, for the reason that, under the laws of Illinois as declared by the decisions of its courts, this plaintiff was and is liable as garnishee in said suit.

7 The plaintiff further states that on the tenth day of June, in the year 1891, Peter Tourville, instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against The Wabash Railroad Company, the plaintiff herein, as defendant, claiming the sum of $81.98, due him for wages earned in the service of said defendant; and that said suit was tried and appealed, and passed through various legal stages, finally resulting in a judgment against the defendant in said cause, the plaintiff herein, in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States and has at no time been paid in whole or in part.

The plaintiff further states that since the institution of the first proceedings, either by Alexander Flannigan or Peter Tourville, it has at no time had in its possession more than $81.98, earned by said Peter Tourville; that the judgments of Peter Tourville and Alexander Flannigan, respectively, are both for the same sum of money in the plaintiff's hands and possession, with the *secured* interest thereon, on each judgment herein described respectively.

The plaintiff further states that both defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of $81.98, and accrued interest, from the plaintiff, the said Wabash Railroad Company, and that the defendant, Virgil Rule is threatening to have an execution issued against the prop-

erty of said plaintiff in said cause, and that the said plaintiff does not know and cannot determine which of the defendants is entitled to the said sum of $81.98 and accrued interest which it holds and stands ready to pay. And that said plaintiff is in danger of having to pay twice, and that the said plaintiff has never been and is not now indemnified by either of said defendants, nor is said
8 plaintiff in collusion with either of said defendants, nor has the plaintiff any interest in said claims of said Virgil Rule or Alexander Flannigan to said fund, as hereinbefore set forth.

The plaintiff further states that the said defendant, Virgil Rule, is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears as such in the margin of the record of the same.

Wherefore the plaintiff prays this honorable court, to be permitted to pay said sum of $81.98 and accrued interest, into this court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof to said parties, or either of them, and be dismissed with its reasonable costs, etc. And that the said Alexander Flannigan and Virgil Rule be ordered to interplead and required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court, and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to the said defendants, Alexander Flannigan and Virgil Rule, commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to, abide and perform such other orders and decrees therein as to your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs, and a reasonable allowance to plaintiff for attorney's fees, and any further remedies which to your honor may seem meet and just in the premises.

The plaintiff states that since the filing of the petition in this
9 cause, the defendant, Virgil Rule, has caused an execution to be issued in said cause, by Henry Troll, clerk of this court, and caused the same to be placed in the hands of Joseph Dieckman, sheriff of the city of St. Louis, State of Missouri, and at the instance of said defendant, Virgil Rule, the said sheriff is threatening to levy upon the property of said plaintiff under said execution, and that if said levy is made, the judgment in this cause will be rendered ineffectual.

Plaintiff further prays your honor to restrain said defendants, Virgil Rule, assignee of Peter Tourville aforesaid, and Alexander Flannigan, and each of them, from issuing or causing to be issued any execution or other process, in the courts of the 8th judicial circuit of Missouri, as well as from seizing or attempting to seize any part of said fund of $81.98, either in the plaintiff's hands prior to its payment into this court, or after said payment into said court,

and from levying or attempting to levy upon said fund, either in the plaintiff's hands prior to the payment thereof into this court, or afterwards, and to refrain from intermeddling with the said fund in any manner, until their respective claims to said fund have been adjudicated by this honorable court, or until further order of this court in the premises.

Wherefore plaintiff prays this honorable court to issue an order staying the levy upon said execution, and staying any further executions, or other process, except the interpleas to be filed by the defendant herein, as prayed for in this bill.

GEO. S. GROVER,
Attorney for Plaintiff, Interpleader.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Geo. S. Grover, being duly sworn, do say that I am attorney for the plaintiff in the above entitled cause; that I have read the foregoing third amended petition, and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

GEO. S. GROVER.

Subscribed and sworn to before me this fifth day of April, A. D. 1901.

B. S. WINSTON,
Notary Public, City of St. Louis, State of Missouri.

My commission expires Nov. 2nd, 1901.

That said petition was an amended petition filed in said entitled cause, then pending in division No. 4 of said circuit court.

That each and every allegation contained in said petition are true.

That thereafter at the April term of said court, the defendants in said suit, Alexander Flannigan and Virgil Rule, each in open court entered their voluntary appearance to said action and said Flannigan filed an answer admitting the allegations of said petition, and prayed that it might be adjudicated that said fund belonged to him.

The said Virgil Rule filed a demurrer to said petition.

That on the 15th day of April the judge of said division of said court made an order in said cause directing that the defendants Rule and Flannigan be required to show cause on the 19th day of April, 1901, why they should not be restrained from issuing or causing to be issued an execution or other process in the courts of the 8th judicial circuit of Missouri, as well as from seizing or attempting to seize any part of said fund of $81.98 and why they should not be further enjoined and restrained as prayed in said petition, and in the meantime so enjoined and restrained them.

That on the 19th day of April, the said Virgil Rule filed his return to said order to show cause, but said Flannigan made default.

That such proceedings were had in said cause, that on the 29th day of April, 1901 the said division of said circuit court in which said cause was pending without a hearing thereof, dismissed said cause and this plaintiff's bill of interpleader hereinbefore set out and refused to grant the injunction against defendants, Rule and Flannigan as prayed in said petition.

That thereafter on the 30th day of April, 1901, this plaintiff filed in said division of said court its motion for a new trial and rehearing, which was by said division of said court on the 6th day of May, 1901, overruled, to which action of the court this plaintiff then and there excepted.

That on the 13th day of May 1901 this plaintiff filed in said cause in said division of said court a supersedeas bond in principal sum of $1500.00 which bond was duly approved by said division of said court. Plaintiff says that it intends to prosecute said cause without delay, to a final judgment in said court of appeals.

Plaintiff further states that since the granting of said appeal of said cause to this court, the defendant, Virgil Rule, has caused an execution to be issued out of the office of the clerk of said circuit court, on the said judgment of which he is assignee, and placed the same in the hands of the defendant, Joseph Dickman, sheriff as aforesaid, with the direction to seize the property of this plaintiff for the purpose of satisfying the judgment on which said execution was issued.

That the said sheriff and the said Rule are now threatening
12 to levy upon the property of this plaintiff under said execution for the purpose of satisfying said judgment.

That the said Flannigan on the 5th day of April 1901, instituted in the circuit court of the city of St. Louis Missouri an action by attachment against said Peter Tourville and in said action, on the 5th day of April, 1901, caused this plaintiff to be summoned as a garnishee therein.

That said Flannigan is now threatening to proceed with said cause to final judgment against this plaintiff as garnishee and thereby procure a second judgment for said fund mentioned in said bill of interpleader hereinbefore set out.

Plaintiff further states that the said Tourville and Rule are insolvent, that the defendant, Flannigan is a non-resident of the State of Missouri, and that unless the said Rule and the said Sheriff Dickman and his deputies be enjoined and restrained from seizing or levying upon the property of this plaintiff and from further proceeding under said execution issued on said judgment of which Rule is assignee, and from making sale of property or doing any act whatsoever under or by virtue of said execution or any other execution issued on said judgment and unless the said Rule be restrained and enjoined from causing any other execution to be issued on said judgment, and that unless said Flannigan be restrained and enjoined from the further prosecution of said garnishment proceeding, pend-

ing the appeal of said bill of interpleader in this court, the judgment to be rendered in this court in said interpleader cause will thereby be rendered ineffectual, and that unless the parties defendant herein be restrained, as aforesaid, this plaintiff will have to pay the said sum twice and will suffer irreparable injury for which the law affords no adequate remedy, and will be subject to a multiplicity of vexatious suits.

13 Wherefore the plaintiff prays that by order and decree of this court the defendant Flannigan be enjoined and restrained from further prosecuting his garnishment proceedings against this plaintiff, and that said defendants, Rule and Sheriff Dickman and his deputies, by the order and decree of this court be enjoined and restrained from seizing and levying upon the property of this plaintiff, and from further proceeding under said execution, issued on said judgment of which defendant Rule is assignee and from making sale of property or doing any act whatsoever under and by virtue of said execution or any other execution issued on said judgment, and that the said Rule be, by the order and decree of this court, restrained and enjoined from causing any other execution to be issued on said judgment of which he is assignee and that Clerk Troll be, by the order and judgment of this court, restrained and enjoined from issuing any further executions on said judgment of which defendant Rule is assignee, until a final decision be made by this court of the said interpleader suit appealed to this court as aforesaid, and until said last mentioned cause is finally determined and until the further order of the court.

THE WABASH RAILROAD COMPANY,
By GEO. S. GROVER, *Its Attorney.*

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, George S. Grover, being duly sworn, do say that I am attorney for the plaintiff in the above entitled cause and make affidavit as such on behalf of said plaintiff; that I have read the foregoing petition and know the contents thereof and that the statements and allegations therein contained are true, as I verily believe.

GEO. S. GROVER.

Subscribed and sworn to before me this 27th day of May 1901. My term expires April 7, 1902.

JOHN ELSPERMANN, JR.,
Notary Public.

14 And afterwards on the same day, the following injunction bond was filed with the clerk of said court:

In the St. Louis Court of Appeals. In Vacation.

THE WABASH RAILROAD COMPANY, Interpleader,
vs.
VIRGIL RULE, ALEXANDER FLANNIGAN, and JOSEPH DIECKMANN, Sheriff of the City of St. Louis, Missouri, Defendants.

Know all men by these presents, that we, the Wabash Railroad Company as principal, and Henry C. Haarstick and Charles Parsons, as sureties, are held and firmly bound unto Virgil Rule, Alexander Flannigan, and Joseph Dieckmann, sheriff of the city of St. Louis, Missouri, and Henry Troll, circuit clerk of the city of St. Louis, Missouri, in the sum of fifteen hundred dollars ($1500.00) lawful money of the United States, to the payment of which, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns firmly by these presents.

The condition of the above obligation is such that whereas, upon the application of the above bounden The Wabash Railroad Company, the said St. Louis court of appeals, in vacation, has granted a temporary injunction or restraining order against said Virgil Rule, Alexander Flannigan, and Joseph Dieckmann, sheriff of the city of St. Louis, Missouri, as by the record of said court will fully appear:

Now therefore, if the Wabash Railroad Company shall and will abide the decision which shall be made in the cause wherein said injunction was granted, and pay all sums of money, damages and costs that shall be adjudged against it, if said injunction shall be dissolved, then this obligation shall be void; otherwise to remain in full force.

15 Witness our hands and seals this 23rd day of May, A. D. 1901.

THE WABASH RAILROAD COMPANY,
[SEAL.] By J. RAMSEY, JR.,
HENRY HAARSTICK.
CHARLES PARSONS.

Attest: E. B. CRYOR,
Ass't Secretary.

Whereupon the court on the same day ordered a temporary injunction as follows:

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

The State of Missouri to Alexander Flannigan, Virgil Rule, and Joseph Dieckman, Greeting:

Whereas the cause of The Wabash Railroad Company *vs.* Alexander Flannigan and Virgil Rule is now pending in the St. Louis court of appeals, by appeal from the circuit court of the city of St.

Louis and whereas the purpose and object of the said suit is to require the defendants Flannigan and Rule to interplead for a certain fund in the hands of the Wabash Railroad Company claimed by both said Flannigan and the said Rule and which the said Wabash Railroad Company offers to pay into court and whereas both said Rule and said Flannigan have recovered a several judgment against the said Wabash Railroad Company for said fund. And the said Rule has caused an execution to issue on his said judgment and has placed the same in the hands of Joseph Dieckman, sheriff of the city of St. Louis who as such sheriff has levied the same on the property of the said Wabash Railroad Company. And whereas the Wabash Railroad Company has duly *excepted* a good and sufficient stay bond to indemnify the said Rule and the said Flannigan against loss or damages, by reason of the
16 issuance of any order to stay the executions if the said judgments or either of them. And whereas the said Wabash Railroad Company, has presented to the undersigned judge of the St. Louis court of appeals in vacation of said court, its application for a stay of execution issued as aforesaid and to stay the issuance of any other or further execution on either of said judgments pending the aforesaid appeal and had here now executed its bond in the penal sum of fifteen hundred dollars with good and sufficient sureties to indemnify the said Flannigan and the said Rule against loss or damage on account of the stay of execution on the said judgments pending the said appeal—Now being willing that no injustice be done in the premises, it is by the undersigned judge of the St. Louis court of appeals, in vacation of said court, ordered that you, the said Flannigan and the said Rule and the said Dieckman and all other defendants named in the application for a stay of execution, be and you are hereby enjoined and restrained from issuing or levying any execution on either of the aforesaid judgments pending the appeal of the cause of The Wabash Railroad Company *vs.* Flannigan and Rule, and the said Joseph Dieckman, sheriff of the said city of St. Louis is hereby directed and required to immediately release and return the aforesaid property of the Wabash Railroad Company seized and levied upon by you by virtue of the execution issued in favor of the said Rule and against the Wabash Railroad Company and the — Alexander Flannigan, Virgil Rule and Joseph Dieckman, sheriff aforesaid hereof, fail not at your peril.

In witness whereof, I have hereunto set my hand and
[SEAL.] caused the seal of the St. Louis court of appeals to be affixed this 28th day of May, 1901.

C. C. BLAND,
P. Judge, St. Louis Court of Appeals.

17 And afterwards, to-wit, on the 13th day of August, 1901, the following abstract prepared by appellant was filed:

In the St. Louis Court of Appeals, October Term, A. D. 1901.

WABASH RAILROAD COMPANY (Interpleader), Appellant, v. ALEXANDER FLANNIGAN and VIRGIL Rule, Respondents.	No. 8267. Appeal from Circuit Court of the City of St. Louis, Hon. Wm. Zachritz, Presiding.

Abstract.

This was a bill of interpleader in which the appellant here and plaintiff below, a mere stakeholder, sought to pay a fund in its hands, in which there were two final judgments in different jurisdictions, into court, both of the judgment creditors having appeared and admitted the allegations contained in the bill. The court below denied the relief prayed for and dissolved the temporary injunction previously granted by it, without a hearing, from which order the defendant in due time perfected its appeal.

Petition.

On the 20th day of December, 1900, the plaintiff filed the following petition:

Now at this day comes The Wabash Railroad Company, the plaintiff in the above entitled cause of action, and says that it is a corporation, owning and operating a line of railroad in the
18 States of Missouri and Illinois; that it is duly organized under the laws of said States:

The plaintiff further states that at some time about or previous to the months of May and June, in the year 1891, it had in its employ one Peter Tourville. While in the employ of said plaintiff said Peter Tourville earned $81.98 more or less.

The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants above named, instituted an attachment proceeding against Peter Tourville before Justice of the Peace James H. Wyatt, of St. Clair county, Illinois. On said first day of April, 1895, writ was returned duly executed, by summoning the Wabash Railroad Company as garnishee; on the 14th day of June 1895, judgment was rendered against the said Wabash Railroad Company, garnishee, defendant, in the sum of $81.98, and said judgment was not appealed from by said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against the said Peter Tourville, defendant, and The Wabash Railroad Company, garnishee, defendant, in the State of Illinois, and that it at no time has been paid, in whole or in part.

The plaintiff further states that on the 10th day of June, in the year 1891, Peter Tourville instituted a suit before a justice of the

peace in the city of St. Louis, State of Missouri, against The Wabadh Railroad Company, defendant, claiming the sum of $81.98 due him for wages earned in the service of said defendant; and that said suit was tried and appealed and passed through various legal stages, finally resulting in a judgment against the defendant in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States and has at no time been paid, in whole or in part.

19 The plaintiff further states that both the defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of $81.98 from the plaintiff, the said Wabash Railroad Company, and that the said plaintiff is in danger of having to pay twice; and that the said plaintiff has never been, and is not now, indemnified by either of said defendants, nor is said plaintiff in collusion with either of said defendants.

The plaintiff further states that the said defendant, Virgil Rule, is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears in the margin of the record of the same.

Wherefore, the defendant prays this honorable court to be permitted to pay said sum of $81.98 into his court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof, to said parties, or either of them, and be dismissed with its reasonable costs, etc. And that the said Alexander Flannigan and Virgil Rule be required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to the said defendants, Alexander Flannigan and Virgil Rule, commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to and abide and perform such other orders and decrees therein as — your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs and any further remedies which to your honor may seem meet and just in the premises.

20 *Service of Process.*

And upon said petition a writ of summons was issued against Alexander Flannigan and Virgil Rule, in which writ the sheriff made the following returns:

"Executed this writ in the city of St. Louis, this 21st day of December, 1900, by delivering a copy of the writ and petition as furnished by the clerk to Virgil Rule, defendant herein.

(Signed) JNO. H. POHLMAN, *Sheriff.*
GEO. W. AUTOR, *Deputy.*

"After due and diligent search, the within named defendant, Alexander Flannigan, cannot be found in the city of St. Louis, Missouri.

(Signed) JOS. DIECKMANN, *Sheriff.*
JOS. S. SCHILBIRG, *Deputy.*

Demurrer.

To which petition, on December 22, 1900, the defendant, Virgil Rule, filed the following demurrer:

Comes now the defendant, Virgil Rule, in the above entitled cause, and demurs to the petition, or bill of interpleader, filed by the plaintiff herein, for the following reasons, to-wit:

First. That the court has no jurisdiction over the defendant, Alexander Flannigan.

Second. Because there is another action pending between the same parties for the same cause in this State, to-wit, case No. 85,743, division No. 3 of this court, under the style of Peter Tourville *v.* The Wabash Railroad Company. In that case Peter Tourville obtained judgment of the plaintiff's interpleader, as set out in plain-
21 tiff's bill, and the amount of said judgment was for $81.00, but it is the same judgment referred to in said bill as having been assigned on the margin of the record to defendant Rule. The cause of action that is being litigated in that case are the claims of defendant Flannigan and said Tourville, the assignor of defendant Rule, to the funds now sought to be brought into court. And this defendant says that the right of his assignor to said funds as against defendant Flannigan, and therefore this defendant's right thereto, has been decided by the St. Louis court of appeals, the supreme court of the State of Missouri, and the Supreme Court of the United States; and the respective claims of the defendants herein will have been fully and finally determined and adjudicated as soon as the mandates of the two last named courts reach this court.

Third. Because the petition, or bill of interpleader, does not state facts sufficient to constitute a cause of action that is grounds for an interpleader against the defendant Virgil Rule.

Voluntary Appearance of Defendant Rule.

And thereafter, on the 5th day of February, 1901, defendant Flannigan filed the following voluntary appearance in said cause:

"I, Alexander Flannigan, do hereby enter my voluntary appearance in the above entitled cause, and hereby authorize Henry W. Blodgett, of the city of St. Louis, an attorney at law, to appear for and defend me and in all matters to act in the above entitled cause as my attorney."

Answer of Defendant Flannigan.

To which petition, on the 5th day of February, 1901, the defendant Flannigan, having entered his voluntary appearance in this cause by his attorney, and for his answer says: He admits each and every allegation set forth in the petition of the plaintiff.

22 Wherefore, this defendant says that under the facts stated in the petition he is entitled to said $81.98 mentioned therein, for which, with his costs, he prays judgment.

Second Amended Petition.

On the 20th day of February, 1901, the plaintiff filed the following amended petition:

Now this day comes The Wabash Railroad Company, the plaintiff in the above entitled cause of action, and says that it is a corporation, owning and operating a line of railroad in the States of Missouri and Illinois; that it is duly organized under the laws of the State of Ohio. And that in the State of Illinois it employs agents at its various stations within that State, which under the laws of that State are subject to have legal processes served upon them, which are directed against the plaintiff in this case, thereby serving personally this plaintiff with process.

The plaintiff further states that at some time about or previous to the months of May and June, in the year 1891, it had in its employ one Peter Tourville. While in the employ of said plaintiff said Peter Tourville earned $81.98, more or less.

The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants above named, instituted an attachment proceeding against Peter Tourville before James H. Wyatt, a justice of the peace for St. Clair county, Illinois, who had jurisdiction both of the subject matter and the person of the defendant, and garnisheed defendant in that cause under article 2, section 1, paragraph 16, of an act of the legislature of the State of Illinois, entitled "An act to revise the law in relation to justices of the peace and constables," approved June 26, 1895, in force July 1, 1895, which reads as follows:

"Justices of the peace shall have jurisdiction in their respective counties in the following cases, when the amount claimed does not exceed two hundred dollars: * * * In garnishment by attachment or summons, the amount of the claim of the garnishor, and not the amount of the answer of the garnishee shall determine the jurisdiction."

23 On said first day of April, 1895, writ was returned duly executed by summoning The Wabash Railroad Company as garnishee; on the fourteenth day of June, 1895, judgment was rendered against The Wabash Railroad Company, garnishee, defendant, in the sum of $81.98, and said judgment was not appealed from by

said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against the said Peter Tourville, defendant, and The Wabash Railroad Company, garnishee, defendant, in the State of Illinois, and that it has at no time been paid *in whole or in part.*

The plaintiff further states that on the tenth day of June, in the year 1891, Peter Tourville instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against The Wabash Railroad Company, defendant, claiming the sum of $81.98, due him for wages earned in the service of said defendant; and that said suit was tried and appealed, and passed through various legal stages, finally resulting in a judgment against the defendant *against the defendant* in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States, and has at no time been paid in whole or in part.

The plaintiff further states that since the institution of the first proceedings, either by Alexander Flannigan or Peter Tourville, it has at no time had in its possession more than $81.98 earned by said Peter Tourville; that the judgments of said Peter Tourville and Alexander Flannigan, respectively, are both for the same sum of money in the plaintiff's hands and possession.

The plaintiff further states that both the defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of $81.98 from the plaintiff, the said Wabash Railroad Company, and that the defendant Rule is threatening to have an execution issued against the property of said plaintiff in said cause, and that the said plaintiff does not know and
24 cannot determine which of the defendants is entitled to the said sum of $81.98, which it holds and stands ready to pay. And that said plaintiff is in danger of having to pay twice, and that the said plaintiff has never been and is not now indemnified by either of said defendants, nor is said plaintiff in collusion with either of said defendants, nor has the plaintiff any interest in the said claims of said Virgil Rule or Alexander Flannigan to said fund, as hereinbefore set forth.

The plaintiff further states that the said defendant Virgil Rule is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears as such in the margin of the record of the same.

Wherefore, the plaintiff prays this honorable court to be permitted to pay said sum of $81.98 into this court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof to said parties, or either of them, and be dismissed with its reasonable costs, etc. and that the said Alexander Flannigan and Virgil Rule be ordered to interplead and required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court, and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to said defendants, Virgil Rule and Alexander Flan-

nigan, commanding them, and each of them, at a certain time, and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to, abide and perform such other orders and decrees therein as to your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs, and any further remedies which to your honor may seem meet and just in the premises.

25 The plaintiff further states that since the filing of the petition in this cause, the defendant Virgil Rule has caused an execution to be issued in said cause by Henry Troll, clerk of this court, and caused the same to be placed in the hands of Joseph Dieckmann, sheriff of the city of St. Louis, State of Missouri, and at the instance of said defendant Virgil Rule the said defendant sheriff is threatening to levy upon the property of said plaintiff under said execution, and that if said levy is made, the judgment in this cause will be rendered ineffectual.

Wherefore, plaintiff prays this honorable court to issue an order staying the levy upon said execution and *staying the levy upon said execution and* staying any further execution or other process, except the interpleas to be filed by the defendants herein, as prayed for in this bill.

Motion to Strike Out Filed by Defendant Rule.

On the 26th day of February, 1901, the defendant Rule filed the following motion to strike said amended petition from the files:

Now comes the defendant Virgil Rule, and as to the second amended petition in said cause, appearing for the purposes of this motion only, moves the court to strike said second amended petition from the files, for the reason that the plaintiff in said second amended petition is in law an individual, or legal entity, other and different from the plaintiff described in the original petition, and no process has been issued out of this court on behalf of the Wabash Railroad Company of the State of Ohio against the original defendants in this cause, and for the further reason that no process has been issued out of this court against defendant Joseph Dieckmann or Henry Troll, and that said parties are unnecessary parties to this suit.

26 *Leave to File Third Amended Petition.*

On the 15th day of April, 1901, the plaintiff was granted leave to file its third amended petition, and before the filing of same the defendant Virgil Rule filed the following objections thereto:

Defendant Virgil Rule, while not appearing to the third amended petition proposed to be filed herein, makes the following objections to the filing of said petition:

Because it appears upon the face of the petition that the plaintiff named in the third amended petition is a corporation and citizen of the State of Ohio, where in the original petition filed herein the plaintiff was not a corporation and citizen of the State of Ohio; and the filing of said petition in this cause is an attempt to bring this defendant into court without due process, and is contrary to the constitution of the State of Missouri and of the United States. Said third amended petition is as set out on pages 5–9 inclusive.

Temporary Injunction Granted.

The court then and there granted a temporary injunction as follows, to-wit:

The court having duly considered the plaintiff's application heretofore submitted for leave to file its third amended petition herein, as also the written objection thereto filed by defendant Rule, doth grant said plaintiff leave to file said third amended petition herein, which is accordingly done. And the court having read said third amended petition, which is duly verefied by affidavit, praying fro a restraining order herein, doth order that the said defendants be and appear in division No. four of this court at two o'clock in the afternoon on Friday, April 19, 1901, and show cause, if any they have, why a temporary injunction should not be issued herein, and the relief
27 prayed for in said third amended petition should not be granted.

And in the meantime, and until the further order of this court, upon plaintiff executing and filing an injunction bond in the sum of one thousand dollars, that then the defendants, and each of them, be and they are hereby restrained from levying or causing to be levied and from seizing or causing to be seized the property of plaintiff until the matters here in controversy can be fully adjudicated.

Injunction bond in the sum of one thousand dollars, with Charles Parsons and Logan Tompkins as sureties, approved and filed.

Return of Sheriff.

The sheriff thereafter filed his return to the order of the court to show cause contained in the court's order of April 12, 1901, in which it was recited that he had levied upon defendant's property pursuant to the execution duly issued in court room No. 3.

Second Petition Stricken Out.

On motion of defendant Virgil Rule, the court struck out plaintiff's second amended petition, to which ruling order and motion of the court the plaintiff then and there duly excepted and saved its exceptions.

Return of Defendant Rule.

And thereafter, on the 19th day of April, 1901, the defendant Rule filed the following return, to-wit:

Comes now Virgil Rule, one of the defendants named in the third amended petition filed herein, and without in anywise
28 appearing in said petition is so far as plaintiff therein named is a corporation of the State of Ohio, and appearing for the purposes of this return only, for his return to the order of this court to show cause, if any he has, on Friday, April 19, 1901, why a temporary injunction should not issue, a[illegible] the relief prayed for in this third amended petition should not be granted, and said injunction should not issue herein, and that the injunction in the restraining order should be dissolved for the following reasons, to-wit:

First. Because the bill does not state facts sufficient to constitute a cause of action for the equitable relief prayed for therein.

Second. Because there is another action pending between the same parties for the same cause of action in this State, in so far as the cause of action goes to enjoin the collection of the judgment in the case of Peter Tourville, plaintiff *vs.* Wabash Railroad Company, defendant, No. 85,743, room 3, of the circuit court of the city of St. Louis, Missouri, referred to by plaintiff in said third amended petition. That said cause of action is the case of Wabash Railroad Company, plaintiff, *vs.* Virgil Rule, assignee of Peter Tourville, defendant, the same being case No. 68, to the June term, 1901, of said court.

Third. Because payment of the judgment which was directed to be entered by the St. Louis court of appeals on March 26, 1896, in the case designated in the third amended petition, page —, as having been instituted June 10, 1891, would have been, in law, a full and complete defense to any liability on behalf of the plaintiff herein to the attachment suit of Alexander Flannigan against Peter Tourville, referred to on page — of the third amended petition as having been instituted April 1, 1895.

Fourth. Because in the case of Peter Tourville, plaintiff *vs.* The Wabash Railroad Company, defendant, referred to in said
29 third amended petition as having been instituted on the 10th day of June, 1891, the rights of said Peter Tourville (and, therefore, of his assignee) as against the judgment of Alexander Flannigan, referred to in said third amended petition, were fully and finally determined and adjudicated in this, to-wit: The St. Louis court of appeals on March 26, 1895, by its judgment and finding in said cause, directed the circuit court of the city of St. Louis to enter a judgment in said Tourville's favor in the sum of eighty-one dollars. And it appears from said third amended petition that thereafter, on or about April 1, 1895, said Alexander Flannigan instituted an attachment suit against said Tourville, and had the Wabash Railroad Company summoned as garnishee, and that thereafter said Flannigan obtained judgment in said cause against

the Wabash Railroad Company. This defendant says that the Wabash Railroad Company interposed said judgment as a bar and defense to the judgment *to the judgment* of said Tourville above set forth, and carried said cause to the supreme court of this State and of the United States, assigning as its reason therefor that the St. Louis circuit court had not given full faith and credit to the said judgment of Alexander Flannigan now set out in plaintiff's third amended bill of interpleader, and said appellate courts and the St. Louis circuit court fully and finally adjudicated the validity of said Tourville's judgment against that of said Flannigan.

Fifth. Because this court is wholly without jurisdiction to restrain the collection of the judgment of another court of competent jurisdiction, in the absence of any allegation of fraud in obtaining said judgment. Division No. 3 of the circuit court of the city of St. Louis has the exclusive right to control the judgment and execution set forth in said third amended petition and this court is without jurisdiction to interfere therewith.

Sixth. Because division No. 3 of the circuit court of the city of St. Louis, out of which the execution described in plaintiff's third amended petition issued, and in which the judgment on which said execution was based, was obtained, has the sole and exclusive right to control said judgment or to stay any execution thereon, and this court is wholly without jurisdiction to interfere with the judgment and execution of another court of competent jurisdiction.

Seventh. Because the respective demands of Peter Tourville and Alexander Flannigan against the Wabash Railroad Company have been known to plaintiff, as it appears from their third amended petition, since the month of June, 1891, and no effort was made by said company for a period of about ten years to bring said fund into court and have said parties interplead for the same.

Eighth. Because it appears from said third amended petition that the Wabash Railroad Company, with full knowledge of the respective demands of said Tourville and Flannigan, permitted said demands to ripen into judgments of cour*st* of competent jurisdiction without bring- said fund into court and having the respective claimants interplead therefor.

Ninth. Because the judgments of the St. Louis court of appeals, rendered on the 26th day of March, 1895, directing the St. Louis circuit court to enter a judgment in favor of Peter Tourville against the Wabash Railroad Company, was at all times a full and competent defense on behalf of the said Wabash Railroad Company, garnishee, to the suit of Alexander Flannigan against Peter Tourville, begun before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, on April 1, 1895, but the Wabash Railroad Company neglected and failed to plead said judgment in bar to said suit of said Flannigan, and thus aided and assisted said Flannigan in obtaining a judgment against it, which he otherwise could not have obtained.

Tenth. Because — a suit instituted by Alexander Flannigan *v.* Peter

Tourville and The Wabash Railroad Company, garnishee, on
31 the 3rd day of June, 1891, before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, said Flannigan obtained a judgment against the Wabash Railroad Company impounding the debt of eighty-one dollars due from said company to Tourville. That said judgment would have been a full and complete defence to the second *to the second* garnishment proceedings referred to in the third amended petition herein as having been begun before the same justice of the peace for the purpose of impounding the same fund on April 1, 1895, yet said company neglected and failed to interpose said judgment, and thus aided and assisted said Flannigan in obtaining a second judgment for the same fund in the same court which had previously been paid by said company to Flannigan under execution.

Eleventh. Because it appears from the third amended petition herein that the debts of Alexander Flannigan and Virgil Rule, assignee of Peter Tourville, *and* judgment debts of different jurisdictions, one of Illinois and the other of Missouri, and a judgment debt of one jurisdiction is not subject to an interpleader in another jurisdiction.

Twelfth. Because it is too late for the Wabash Railroad Company, after having fought the right of Peter Tourville to obtain a judgment against it in a court of law, to ask the intervention of a court of equity to prevent the collection of such judgment.

Thirteenth. Because the plaintiff named in the third amended petition, to-wit, The Wabash Railroad Company of Ohio, is a legal entity and corporation or citizen of the State of Ohio, and this defendant has not been brought into court or served with any process issued out of this court at the instance of said corporation, and the third amended petition filed herein is an attempt to bring this defendant into court at the instance of the Wabash Railroad
32 Company of Ohio without due process of law.

Fourteenth. Because it appears upon the face of the third amended petition that the Wabash Railroad Company has been guilty of laches in the bringing of this bill of interpleader, and, therefore, the same cannot be maintained.

Fifteenth. Because this court has no jurisdiction over defendant Flannigan, and could not enforce its decree against him.

Sixteenth. Because the third amended petition states no "legal wrong" within the meaning of the statute calling for equitable relief.

Seventeenth. Because plaintiff would have an adequate remedy at law in an action for damages against this defendant if the collection of the debt is unlawful.

Wherefore, defendant Rule prays that the injunction of said restraining order be dissolved; that this defendant be discharged with his costs; that this defendant be granted leave to file a motion to assess his damages on the injunction bond, and that the same be set down for hearing during this term of court.

Answer of Defendant Flannigan to Third Amended Petition.

And on the 22nd day of April, 1901, the defendant Flannigan filed the following answer to plaintiff's third amended petition, as follows:

"Now on this day comes the defendant Alexander Flannigan, having entered his voluntary appearance in this cause, by his attorney, for his answer to plaintiff's third amended petition says, he admits each and every allegation set forth in the petition of plaintiff.

Defendant further says that by virtue of said judgment of Peter Tourville against the Wabash Railroad Company to the use
33 of Alexander Flannigan, obtained in Illinois, as stated in plaintiff's third amended petition, this defendant thereby obtained a lien upon said sum of $81.98 prior in right to all liens, if any, upon said sum or sums, claimed by Peter Tourville or his assignee Virgil Rule, from the Wabash Railroad Company, and is therefore by virtue of said lien entitled to the payment of said sum from the Wabash Railroad Company.

Wherefore, this defendant, under the facts stated in the plaintiff's third amended petition and this defendant's amended answer, says that he is entitled to said sum of $81.98 mentioned, for which with his costs he prays judgment.

Motion for Relief Prayed for, Notwithstanding Return of Virgil Rule.

And on the 22nd day of April, 1901, plaintiff filed its motion for the relief prayed for, notwithstanding the return of Virgil Rule, as follows, to-wit:

"Now comes the plaintiff in the above entitled cause, by its solicitor, and moves the court here to continue its restraining order now in force, and to proceed with all convenient speed at its convenience to hear and determine the plaintiff's bill of interpleader therein filed, notwithstanding the return of Virgil Rule, defendant, filed in this cause April 19, 1901, for the following reasons, to-wit:

First. Because this court has full and complete jurisdiction over this matter.

Second. Because plaintiff is entitled to the relief here prayed for, notwithstanding said return.

Third. Because said return states no facts which would deprive the plaintiff of the relief prayed for.

34 *Fourth.* Because unless the relief here prayed for is granted to plaintiff, said defendants, Virgil Rule and Alexander Flannigan, will immediately proceed to defeat said bill of interpleader, by compelling the plaintiff, a mere stakeholder, to pay the sum twice out of the sum in plaintiff's hands.

Fifth. Because the plaintiff is entitled to the relief here prayed for, both at law and in equity, upon the facts stated in its third amended petition, and admitted in the return of said Virgil Rule."

Separate Answer of Defendant Flannigan.

And on the same day defendant Flannigan filed his separate answer, which is in words as follows:

Now this day comes the defendant Alexander Flannigan, having entered his voluntary appearance in this cause, by his attorney, to plaintiff's third amended petition, and says: He admits each and every allegation set forth in the petition of plaintiff.

Defendant further says that by virtue of said judgment of Peter Tourville against the Wabash Railroad Company, to the use of Alexander Flannigan, obtained in Illinois, as stated in plaintiff's third amended petition, this defendant thereby obtained a lien upon said sum of $81.98 prior in right to all liens, if any, upon said sum or sums claimed by Peter Tourville or his assignee, Virgil Rule, from the Wabash Railroad Company, and is, therefore, by virtue of said lien, entitled to the payment of said sum from the Wabash Railroad Company.

Wherefore, this defendant, under the facts stated in the plaintiff's third amended petition and this defendant's amended answer, says that he is entitled to said sum of $81.98 mentioned, for which, with his costs, he prays judgment.

35 *Relief Prayed for Denied and Injunction Dissolved.*

And thereafter, on the 29th day of April, the court having examined the third amended petition, the return of the defendant Virgil Rule, the answer of defendant Flannigan, and the motion of plaintiff for the relief prayed for, notwithstanding the return of Virgil Rule, and having duly considered the same, entered the following order:

"*Decision.*

MOND., *Ap'l* 29, 1901.

WABASH R. R. Co.
vs.
FLANNIGAN ET AL.

Prayer of bill denied. Order granting temporary injunction dissolved.

(Signed) W. ZACHRITZ."

Endorsed on back: 19159–A R. 4. Wabash R. R. Co. *vs.* Flannigan *et al.* Memo. of judge. Filed: April 29, 1901. Henry Troll, clerk.

Said order of court, as hereinbefore set forth, was thereupon endorsed upon the court files, as follows:

"April 29, 1901. Prayer of bill denied and temporary injunction dissolved."

And upon the clerk's minutes of said day the following entry appears, after stating the above entitled cause:

36 "Prayer of bill denied and temporary injunction dissolved."

Said order of court having been thereafter duly inscribed in the records of the office of the clerk of the circuit court of the city of St. Louis, Missouri, and plaintiff's exceptions saved to said order of court.

To the ruling and order of the court of April 29, 1901, as hereinbefore set forth, plaintiff, by counsel, then and there duly excepted and saved its exceptions.

Plaintiff's Motion for Rehearing Filed.

On the 30th day of April, 1901, in due time, the plaintiff filed its motion for rehearing, as follows:

Now comes the plaintiff and interpleader in the above entitled cause and moves the court here to set aside its order of April 29, 1901, and grant it a rehearing in said cause, for the following reasons, to-wit:

First. Because the interpleader is entitled in equity to the temporary injunction prayed for in its bill.

Second. Because the interpleader is entitled in equity to the relief prayed for in its bill.

Third. Because the plaintiff is entitled to maintain its bill of interpleader upon the facts stated in its petition, and plaintiff is further entitled to the relief prayed for in said bill.

Fourth. Because the court erred in denying the relief prayed for and in dismissing the plaintiff's bill.

Fifth. Because the court erred in dissolving the injunction previously granted by it in this cause.

Sixth. Because the court erred in dissolving the injunction in this case.

37 *Seventh.* Because the court erred in refusing to set down the interpleader for hearing.

Eighth. Because the court erred in denying the relief prayed for without a hearing.

Ninth. Because the court erred in refusing to allow the plaintiff to pay the fund into court, as prayed for in its bill.

Tenth. Because the court erred in refusing to require the defendants herein to interplead for the fund described in said bill, and in refusing to permit the plaintiff herein to deposit said fund into court.

Eleventh. Because the plaintiff is entitled to the relief prayed for in its bill of equity, upon the facts stated in its petition.

Twelfth. Because the court erred in denying to the plaintiff the relief prayed for in its bill, upon the facts stated in its petition.

Thirteenth. Because the court erred in permitting, as it did by dismissing the plaintiff's bill, and by dissolving the injunction, the

defendant Rule to collect the fund now in the plaintiff's hands, when said plaintiff is a mere stakeholder, and not interested in the conflicting claims of Virgil Rule and Alexander Flannigan to said fund.

Fourteenth. Because the effect of the court's ruling in this cause will be to compel the plaintiff, the interpleader herein, to pay Tourville's wages and his debt, too; or, in other words, pay the same debt twice.

Fifteenth. Because the court erred in refusing to give full faith and credit to the judgment of a sister State, as required by the Constitution and laws of the United States.

38 *Motion for Rehearing Overruled.*

At the same term of court, to-wit, on the 7th day of May, 1901, plaintiff's said motion for rehearing was overruled.

Exceptions Saved.

To which ruling, order and action of the court plaintiff then and there duly excepted and saved its exceptions.

Affidavit for Appeal Filed.

On the 13th day of May, 1901, the plaintiff filed its affidavit for an appeal.

Appeal Allowed.

On the 13th day of May, 1901, the appeal wad allowed to the plaintiff in said cause to the St. Louis court of appeals.

Appeal Bond Filed and Approved.

On the 13th day of May, 1901, plaintiff filed its appeal bond in the sum of $1,5000 with Wm. Nichols and M. M. Buck as sureties, which said bond was then and there by the court approved.

Leave to File Bill of Exceptions.

On the 13th day of May, 1901, by an order of court duly entered of record, the plaintiff was granted leave to file its bill of exceptions on or before June 3, 1901.

39 *Further Leave Granted to File Bill of Exceptions.*

Thereafter, on the 28th day of May, 1901, Hon. Wm. Zachritz, circuit judge, in open court, by order duly entered of record, granted leave to plaintiff to file its bill of exceptions in this cause on or before August 3, 1901.

Bill of Exceptions Filed.

On the 30th day of July, 1901, plaintiff presented its bill of exceptions to Hon. Wm. Zachritz, circuit judge and the same was signed, sealed and made a part of the record in said cause on said day.

Endorsement on Bill of Exceptions.

On the original bill of exceptions now on file in this cause appears the following endorsements:

"O. K." Henry W. Blodgett, attorney for Alexander Flannigan, defendant. Charles P. Johnson and J. D. Johnson with Virgil Rule for himself. July 27, 1901. Geo. S. Grover, attorney for appellant.

This is all of the appellant's abstract.

And afterwards, to-wit, on the 20th day of September, 1901, the respondent filed the following additional abstract, viz:

Additional Abstract of Record Prepared by Respondent Rule.

40 It is not true that both judgment creditors appeared and admitted the allegations in the bill, as stated on page — of appellant's abstract. There was one original and three so-called amended petitions, filed in this case.

First. In the original petition, set forth in appellant's abstract, beginning on page 2, filed December 20th, 1900, the plaintiff was alleged to be The Wabash Railroad Company, a corporation organized under the laws of the States of Missouri and Illinois. To this petition defendant Rule filed a demurrer, and this petition, together with the demurrer thereto, is still pending and undetermined, but another corporation has attempted to substitute itself as party plaintiff.

Second. On February 5th, 1901, the Wabash Railroad Company, a corporation, "duly organized under the laws of the State of Ohio," filed a so-called amended (in fact substituted) petition (Rec. 166, page 585), but no process was ever issued out of the circuit court on behalf of said corporation. This petition was voluntarily abandoned by the filing of a second amended (in fact substituted) petition.

Third. The second substituted petition was filed February 20th, 1901 (Rec. 166, p. 604) and the plaintiff in that petition was again the Ohio corporation, and no process was ever issued out of the circuit court on behalf of that corporation. To that petition also were added additional defendants, to-wit: Joseph Dieckmann, sheriff of the city of St. Louis, and Henry Troll, clerk of the circuit court of the city of St. Louis, but no process was ever served upon them. This petition was also voluntarily abandoned by the filing of a third substituted petition.

Fourth. The third substituted petition was filed April 15th, 1901, (Rec. 173, p. 32) by the Ohio corporation. Defendant Virgil Rule never entered his appearance to any of the petitions filed by the Ohio corporation, and no process was ever issued or served upon him at the instance of that corporation.

41 The demurrer filed by defendant Rule to the petition filed by the original plaintiff speaks for itself. Defendant Rule has not appeared and admitted the allegations of any of the petitions filed by the substituted plaintiff, to-wit, the Ohio corporation. On the contrary, defendant Rule has filed a motion to strike out each of the petitions filed by the Ohio corporation, each of which said motions begins by the recital of the fact, that said Rule does in no wise appear to the substituted petition therein filed, but for the purposes of the motion to strike out, only. The motion to strike out the first amended petition, or substituted petition was filed April 12th, 1901, and sustained on the same day (Rec. 173, p. 34). The motion to strike out the second amended petition (substitute) petition was filed February 26th, 1901, (Rec. 166, p. 610) and sustained April 1st, 1901. (Rec. 173, p. 8). The motion to strike out the third amended (substituted) petition from the files was filed April 29th, 1901. (Rec. 173, p. 55). This motion was still pending and undetermined at the time the appeal was taken in this case and has not as yet been passed upon.

On page 18 of appellant's abstract the recital as to the return of the sheriff to the order to show cause, is untrue. The return of the sheriff on that order is as follows. "Served this order of court in the city of St. Louis, this 15th day of April, 1901, by delivering a copy of the same to the within named Virgil Rule.

(Signed) JOSEPH DIECKMANN, *Sheriff*,
By JOSEPH F. SHILLING, *Deputy*.

After due and diligent search the within named defendant Alexander Flannigan cannot be found in the city of St. Louis, Mo.

JOSEPH F. DIECKMANN, *Sheriff*,
By JOSEPH F. SCHILLING, *Deputy*."

42 The return of the sheriff on the original writ, sued out by the Missouri and Illinois corporation was that Alexander Flannigan could not be found in the city of St. Louis.

On page 35 of appellant's abstract there was no such order as set out in the abstract. On that day, April 29th, the order to show cause, issued on April 15th, having previously been heard and taken under advisement the court passed upon it, and the appellant has attempted to convert a mere memorandum made by the judge into an order of the court. This memorandum was not filed as shown in appellant's abstract, nor was it signed by the judge, as is shown in appellant's abstract.

The facts are: On August 2nd, 1901, three days after the bill of exceptions in this case had been filed, Mr. Grover, attorney for appellant, took this memorandum to the judge and requested him to sign his name thereto, and to date it April 29th, 1901. This date and this signature as above stated was put on the memorandum on August 2nd, 1901; also the endorsement on the back of the paper was, at the request of Mr. Grover, put on the memorandum on August 2nd, 1901. There is no record entry of the filing of this memorandum, and the same was never filed as an order or anything else in this case. The record entry of that day, omitting caption, is as follows (Rec. 173, p. 54), to-wit:

MONDAY, *April 29th*, 1901.

Now at this day comes the parties hereto by their respective attorneys, and the order issued herein on April 15th, 1901, commanding the defendants to show cause why a temporary injunction should not be granted against them, coming on for hearing upon the pleadings, affidavits and proofs adduced, and the court having duly considered the same, and now being sufficiently advised of and concerning the premises, doth consider that the prayer of plaintiff's bill is and be denied. It is further ordered by the court that the restraining order granted against defendants on April 15th, 1901, be
43 and is hereby dissolved."

Appellant's abstract (pages 32-33 this record) also omits the last page of the return of defendant Rule to the order to show cause, which page is as follows:

STATE OF MISSOURI, } ss:
City of St. Louis, }

I Virgil Rule, being duly sworn, do say that I have read over the foregoing return, and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

VIRGIL RULE.

Subscribed and sworn to before me this 19th day of April, A. D. 1901.

HENRY TROLL,
Clerk of the Circuit Court, City of St. Louis, Mo.

Appellant's abstract also omits to state that the order of April 15th, 1901, to show cause, was not served on defendant Flannigan and could not be served upon him by reason of his being a non-resident of the State of Missouri. This act, however, is shown by the return of the sheriff set forth in this abstract.

Appellant's abstract also omits to state that defendant Flannigan never made a return to the order to show cause.

On page 18 of appellant's statement and brief (p. 27 of this transcript) there is a recital that plaintiff, on February 5th, 1901, *refiled* its original petition, with some necessary amendments thereto, relating to certain changes in the situation. The fact is that there had been no changes in the situation at that time, and the plaintiff
44 in the original bill did not *refile* the original bill. The substituted bill filed by the substituted plaintiff is as follows (the changes therein made being printed in italics, and the record entry of the filing of said petition is "Amended petition filed" (Rec. 166, p. 585), to-wit:

Amended Petition.

Now this day comes The Wabash Railroad Company, the plaintiff in the above entitled cause of action, and says, that it is a corporation, owning and operating a line of railroad in the States of Missouri and Illinois; that it is duly organized under the laws of *Ohio*. (In the original petition the wording was, "said States, to-wit: Missouri and Illinois") *And that in the State of Illinois it employs agents at its various stations within that State which, under the laws of this State, are subject to have legal processes served upon them, which are directed against the plaintiff in this cause, thereby serving personally this plaintiff with process.*

The plaintiff further states that, at some time, about or previous to the months of May and June, in the year 1891, it had in its employ one Peter Tourville. While in the employ of said plaintiff, said Peter Tourville earned $81.98 more or less.

The plaintiff further states that on the first day of April, in the year 1895, Alexander Flannigan, one of the defendants above named, instituted an attachment proceeding against Peter Tourville, before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, *who had jurisdiction both of the subject matter and the person of the defendant, and garnishee defendant in that cause, under article two, section one, paragraph sixteen of an act of the legislature of the State of Illinois, entitled "An act to revise the law in relation to justices of the peace and constables," approved June 26th, 1895, in force July 1st, 1895, which reads as follows:*

45 *Justices of the peace shall have jurisdiction in their respective counties in the following cases, where the amount claimed does not exceed two hundred dollars. * * * In garnishment by attachment or summons, the amount of the claim of the garnishor and not the amount of the answer in the garnishee, shall determine the jurisdiction."*

On the first day of April, 1895, writ was returned duly executed,

by summoning the Wabash Railroad Company as garnishee; on the fourteenth day of June, 1895, judgment was rendered against the said Wabash Railroad Company, garnishee defendant, in the sum of $81.98, and said judgment was not appealed from by said Peter Tourville, defendant, and now stands as a final adjudication of the claim of said Alexander Flannigan against the said Peter Tourville, defendant, and The Wabash Railroad Company, garnishee defendant, in the State of Illinois, and that it has at no time been paid, in whole or in part.

The plaintiff further states that on the tenth day of June, in the year 1891, Peter Tourvill instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against The Wabash Railroad Company, defendant, claiming the sum of 81.98 due him for wages earned in the service of said defendant, and that said suit was tried and appealed and passed through various legal stages, finally resulting in a judgment against the defendant in the sum of $81.98, which judgment has recently been affirmed by the Supreme Court of the United States, and has at no time been paid in whole or in part.

The plaintiff further states that since the institution of the first proceedings, either by Alexander Flannigan or Peter Tourville, it has at no time had in its possession more than $81.98 earned by said Peter Tourville; that the judgments of Peter Tourville and Alexander Flannigan, respectively, are both for the same sum of money in the plaintiff's hands and possession.

46 The plaintiff further states that both defendants in this cause of action, Alexander Flannigan and Virgil Rule, are each endeavoring to collect the sum of *of* $81.98 from the plaintiff the said Wabash Railroad Company, and that the said plaintiff does not know and cannot determine which of the defendants is entitled to the said sum of $81.98, which it hold and stands ready to pay. And that said plaintiff is in danger of having to pay twice, and that the said plaintiff has never been and is not now indemnified by either of said defendants, nor is said plaintiff in collusion with either of said defendants.

The plaintiff further states that the said defendant Virgil Rule, is the assignee of the judgment of Peter Tourville against the Wabash Railroad Company, and that the said defendant appears as such in the margin of the record of the same.

Wherefore the plaintiff prays this honorable court to be permitted to pay the said sum of $81.98 into this court, and that thereupon the plaintiff be relieved and discharged from all further liability on account thereof to said parties, or either of them, and be dismissed with its reasonable costs, etc. And that the said Alexander Flannigan and Virgil Rule *be ordered to interplead and* required to present their respective claims to said fund, and that the same may be determined and adjudicated by this court, and said money paid to the party entitled thereto.

May it please your honor to grant unto this plaintiff a process to be directed to the said defendants, Alexander Flannigan and Virgil

Rule, commanding them, and each of them, at a certain time, and under a certain penalty therein to be named, to be and appear before your honor in this honorable court, then and there to answer all and singular the matters aforesaid, and to stand to, abide and perform such other orders and decrees therein as — your honor shall seem meet.

The plaintiff further prays this honorable court to grant and decree costs and any further remedies which to your honor may seem meet and just in the premises."

CHARLES P. JOHNSON AND
JOHN D. JOHNSON,
Attorneys for Respondent Rule.

47 And afterwards, to-wit, on the 5th day of October, 1901, the following motion to dissolve the injunction was filed by defendant Rule:

In the St. Louis Court of Appeals, October Term, 1901.

WABASH RAILROAD COMPANY, Appellant,
vs.
ALEXANDER FLANNIGAN and VIRGIL RULE, Respondents. } No. 8267.

Motion to Dissolve Injunction.

Comes now the respondent in the above entitled cause, Virgil Rule, and moves the court to dissolve the injunction granted herein by the Hon. C. C. Bland on the 28th day of May, 1901, for the following reasons, to wit:

First. Because this court is wholly without jurisdiction in said cause.

Second. Because this court is wholly without jurisdiction over and absolutely without power of enforcing its judgment against the respondent Flannigan, a resident and citizen of the State of Illinois.

Third. Because the injunction issued against defendant Rule is to stay an execution upon a judgment rendered in accordance with the mandate of this court upon a decision rendered on the 25th day of March, 1895, and this cause is not an appeal from said judgment.

Fourth. Because this court has no jurisdiction over original proceedings for an injunction and this is an original proceeding bringing in new parties and enjoining an execution on a judgment not appealed from.

48 Fifth. Because this court is without jurisdiction, except upon an appeal from the refusal of division No. 3 of the circuit court of the city of St. Louis (the court out of which the execution issued) to grant a stay of its execution.

Sixth. Because the appellant's bill does not state facts sufficient

to constitute a cause of action for the equitable relief prayed for therein.

Seventh. Because at the time of the filing of appellant's bill there was another action pending between the same parties for the same cause of action in this State, in so far as the cause of action goes to enjoining the collection of the judgment in the case of Peter Tourville, plaintiff, *vs.* Wabash Railroad Company, defendant, No. 85,743, room 3 of the circuit court of the city of St. Louis, Missouri, referred to by plaintiff in said third amended petition. That said cause of action is the case of The Wabash Railroad Company, plaintiff, *vs.* Virgil Rule, assignee of Peter Tourville, defendant, the same being case No. 68 to the June term 1901, of said court.

Eighth. Because the payment of the judgment which was directed to be entered by the St. Louis court of appeals on March 26th, 1895, in the case designated in the third amended petition, page 2, as having been instituted June 10, 1891, would have been, in law, a full and complete defense to any liability on behalf of the plaintiff herein to the attachment suit of Alexander Flannigan against Peter Tourville, referred to on page 2 of said third amended petition as having been instituted April 1, 1895.

Ninth. Because in the case of Peter Tourville, plaintiff, *vs.* The Wabash Railroad Company, defendant, referred to in said third amended petition as having been instituted on the 10th day of June, 1891, the rights of said Peter Tourville (and, therefore, of his assignee) as against the judgment of Alexander Flannigan, re-
49 ferred to in said third amended petition, were fully and finally determined and adjudicated in this, to wit, the St. Louis court of appeals on March 26, 1895, by its judgment and finding in said cause directed the circuit court of the city of St. Louis to enter a judgment in said Tourville's favor in the sum of eighty-one dollars. And it appears from said third amended petition that thereafter, on or about April 1, 1895, said Alexander Flannigan instituted an attachment suit against said Peter Tourville, and had the Wabash Railroad Company summoned as garnishee, and that thereafter said Flannigan obtained judgment in said cause against the Wabash Railroad Company. This defendant says that the Wabash Railroad Company interposed said judgment as a bar and defense to the judgment of said Tourville above set forth, and carried said cause to the supreme court of this State and of the United States, assigning as its reason therefor that the St. Louis circuit court had not given full faith and credit to the said judgment of Alexander Flannigan now set out in plaintiff's third amended bill of interpleader, and said appellate courts and the St. Louis circuit court fully and finally adjudicated the validity of said Tourville's judgment as against that of said Flannigan.

Tenth. Because this court is wholly without jurisdiction to restrain the collection of the judgment of another court of competent jurisdiction, in the absence of any allegation of fraud in obtaining said judgment. Division No. 3 of the circuit court of the city of St. Louis has the exclusive right to control the judgment and execution

set forth in said third amended petition, and this court is without jurisdiction to interfere therewith.

Eleventh. Because division No. 3 of the circuit court of the city of St. Louis, out of which the execution described in plaintiff's third amended petition issued, and in which the judgment on which said execution was based was obtained, has the sole and exclusive right to control said judgment or to stay any execution thereon, and
50 this court is wholly without jurisdiction to interfere with the judgment and execution of another court of competent jurisdiction.

Twelfth. Because the respective demands of Peter Tourville and Alexander Flannigan against the Wabash Railroad Company have been known to plaintiff, as it appears from their third amended petition, since the month of June, 1891, and no effort was made by said company for a period of about ten years to bring said fund into court and have said parties interplead for the same.

Thirteenth. Because it appears from said third amended petition that the Wabash Railroad Company, with full knowledge of the respective demands of said Tourville and Flannigan, permitted said demands to ripen into judgments of courts of competent jurisdiction without bringing said fund into court and having the respective claimants interplead therefor.

Fourteenth. Because the judgment of St. Louis court of appeals, rendered on the 26th day of March, 1895, directing the St. Louis circuit court to enter a judgment in favor of Peter Tourville against the Wabash Railroad Company, was at all times a full and competent defense on behalf of The Wabash Railroad Company, garnishee, to the suit of Alexander Flannigan against Peter Tourville begun before James H. Wyatt, a justice of the peace of St. Clair county, Illinois, on April 1, 1895, but the Wabash Railroad Company neglected and failed to plead said judgment in bar to said suit of said Flannigan, and thus aided and assisted said Flannigan in obtaining a judgment against it, which he otherwise could not have obtained.

Fifteenth. Because in a suit instituted by Alexander Flannigan *v.* Peter Tourville and The Wabash Railroad Company, garnishee; on the 3rd day of June, 1891, before James H. Wyatt, a
51 justice of the peace of St. Clair county, Illinois, said Flannigan obtained a judgment against the Wabash Railroad Company impounding the debt of eighty-one dollars due from said company to said Tourville. That said judgment would have been full and complete defense to the second garnishment proceedings referred to in the third amended petition herein as having been begun before the same justice of the peace for the purpose of impounding the same fund on April 1, 1895, yet said company neglected and failed to interpose said judgment, and thus aided and assisted said Flannigan in obtaining a second judgment for the same fund in the same court which had been previously paid by said company to Flannigan under execution.

Sixteenth. Because it appears from the third amended petition herein that the debts of Alexander Flannigan and of Virgil Rule,

assignee of Peter Tourville, are judgment debts of different jurisdictions, one of Illinois, the other of Missouri, and a judgment debt of one jurisdiction is not subject to an interpleader in another jurisdiction.

Seventeenth. Because it is too late for the Wabash Railroad Company, after having fought the right of Peter Tourville to obtain a judgment against it in a court of law, to ask the intervention of a court of equity to prevent the collection of such judgment.

Eighteenth. Because the plaintiff named in the third amended petition, to-wit, The Wabash Railroad Company of Ohio, is a legal entity and corporation or citizen of the State of Ohio, and this defendant has not been brought into court or served with any process issued out of this court at the instance of said corporation, and the third amended petition filed herein is an attempt to bring this defendant into court at the instance of the Wabash Railroad Company of Ohio without due process of law.

Nineteenth. Because it appears upon the face of the third amended petition that the Wabash Railroad Company has been guilty of laches in the bringing of this bill of interpleader, and there-

52 fore the same cannot be maintained.

Twentieth. Because this court has no jurisdiction over defendant Flannigan, and could not enforce its decree against him.

Twenty-first. Because the third amended petition states no "legal wrong" within the meaning of the statute calling for equitable relief.

Twenty-second. Because plaintiff would have an adequate remedy at law in an action for damages against this defendant if the collection of the debt is unlawful.

Wherefore, the respondent, Virgil Rule, prays that the injunction issued by the Hon. C. C. Bland out of this court in vacation on the 28th day of May, 1901, be dissolved, and that defendant Rule be allowed the costs of printing the additional abstract filed herein.

CHARLES P. JOHNSON,
J. D. JOHNSON,
Attorneys for Respondent Rule.

53 And afterwards, to-wit, on the 16th day of October, 1901, the following among other proceedings were had:

WABASH RAILROAD COMPANY, Appellant,
v.
ALEXANDER FLANNIGAN ET AL., Respondents.
} Appeal from Circuit Court, City of St. Louis.

Now at this day come the said parties by their respective attorneys and after argument herein, submit this cause to the court.

And afterwards, to-wit, on the 17th day of December, the following judgment was entered in this cause:

WABASH RAILROAD COMPANY, Appellant, v. ALEXANDER FLANNIGAN ET AL., Respondents. } Appeal from Circuit Court, City of St. Louis.

Now again come the said parties by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court of the city of St. Louis be in all things affirmed and stand in full force and effect; and that said respondent- recover of said appellant their costs and charges herein expended and have execution therefor. Opinion filed.

54 *And afterwards*, to-wit, on the 4th day of February, 1902, the following further order was made in said cause:

WABASH RAILROAD COMPANY, Appellant, v. ALEXANDER FLANNIGAN ET AL., Respondents. } Appeal from Circuit Court, City of St. Louis.

Now at this day, the court having fully considered appellant's motion for a rehearing, doth order and adjudge that the said motion be sustained and the judgment of affirmance heretofore entered, set aside, and the cause continued to the March term, 1902, of this court for hearing.

And afterwards, to-wit, on the 13th day of May, 1902, the following judgment was entered:

WABASH RAILROAD COMPANY, Appellant, v. ALEXANDER FLANNIGAN ET AL., Respondents. } Appeal from Circuit Court, City of St. Louis.

Now again come the said parties by their respective attorneys and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment of the circuit court of the city of St. Louis be in all things affirmed and stand in full force and effect; that said respondents recover of said appellant their costs and charges herein expended and have execution therefor. Opinion filed.

And afterwards, to-wit, on the 13th day of May, 1902, the following motion to transfer the cause to the supreme court of Missouri was filed:

55 In the St. Louis Court of Appeals, March Term, 1902.

WABASH RAILROAD COMPANY, Appellant, } Appeal from Circuit
v. } Court of the City
ALEXANDER FLANNIGAN ET AL., Respondents. } of St. Louis.

Now comes the appellant in the above entitled cause, and states to the court that said cause involves a construction of section one of article four of the Constitution of the United States.

Wherefore, appellant prays this honorable court to transfer this cause to the supreme court of Missouri, in accordance with section twelve, article twelve, of the constitution of Missouri.

GEO. S. GROVER,
Attorney for Appellant.

And afterwards, on the 10th day of June, 1901, the following judgment was entered in said cause:

WABASH RAILROAD COMPANY, Appellant, } Appeal from Circuit
v. } Court, City of St.
ALEXANDER FLANNIGAN ET AL., Respondents. } Louis.

Now at this day the court having fully considered the appellant's motion for a rehearing and to transfer this cause to the supreme court of this State and also respondent's motion to tax costs of printing additional abstracts of the record, doth order and adjudgr that said motions be overruled. It is now further considered and adjudged by the court that the judgment of this court rendered herein on the 13th day of May, 1902, be so modified as to read as follows:

56 Now again come the said parties by their respective attorneys and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court of the city of St. Louis be in all things affirmed and stand in full force and effect; whereupon it is further considered and adjudged by the court that the temporary restraining order heretofore made by this court on the — day of —— 190– be and the same is hereby dissolved and for naught held and esteemed and that the above named defendants as well as Joseph Dieckmann, sheriff of the city of St. Louis, Missouri, and Henry Troll, circuit clerk of the city of St. Louis, Missouri, who were included in said temporary restraining order, be dismissed and discharged of and from the premises, so charged upon them by said temporary restraining order and that they depart and go hence without day in that behalf; and also that said respondents recover of said appellant their costs and charges herein expended and have execution therefor. Opinion filed.

To which action of the court in overruling said motions the appellant excepted and still excepts.

And afterwards, on the same day, the following opinion was filed:

57 In the St. Louis Court of Appeals, March Term, 1902.

THE WABASH RAILROAD COMPANY (Interpleader), Appellant,
v.
ALEXANDER FLANNIGAN ET AL., Respondents.

No. 8267. Appeal from Circuit Court, City of St. Louis.

Opinion.

Plaintiff by its third amended petition averred that plaintiff was first organized as a railroad corporation under the laws of the State of Ohio, and subsequently organized under the laws of the States of Illinois and Missouri; that on the first day of August, 1889, and ever since it has been continuously and without change a consolidated corporation; that in the months of May and June, 1891, defendant Tourville, earned as an employé of plaintiff, eighty-one dollars and ninety-eight cents more or less; that defendant Flannigan, in April, 1895, instituted an attachment proceeding against Tourville before James H. Wyatt, a justice of the peace for St. Clair county, Illinois, who had jurisdiction both of the subject matter and person of defendant Tourville and garnished the plaintiff in the cause, and that on June 14, 1895, judgment was rendered by said justice in said cause against Tourville and the plaintiff as garnishee for eighty-one dollars and ninety-eight cents, and that said
58 judgment was not appealed from and remains in full force and effect, no part of it having been paid by Tourville or the Wabash Railway Company; and that an appeal by the Wabash Railway Company as garnishee would have been wholly unavailing under the laws of Illinois as there in force; that on the tenth day of June, 1891, Tourville instituted a suit before a justice of the peace in the city of St. Louis, State of Missouri, against the Wabash Railroad Company, claiming the sum of eighty-one dollars and ninety-eight cents due him for wages earned in the service of said railway company and that said suit was tried and passed through various courts of this State by appeal, resulting in a judgment of eighty-one dollars and ninety-eight cents, which was finally affirmed by the Supreme Court of the United States; that both judgments are for the same sum of money and that plaintiff never owed Tourville but the one sum of eighty-one dollars and ninety-eight cents; that Tourville has assigned his judgment to defendant, Virgil Rule, and that Flannigan and Rule were each undertaking to collect his several judgment, and that plaintiff is in danger of having to twice pay the sum of eighty-one dollars and ninety-eight cents, and alleges that it is ready and willing to pay the said sum with interest to the party to whom it is due, but that it is unable to determine or to know whether the said sum and interest should be paid to Flannigan or to

Tourville and Rule and prays that they be directed to come into court and interplea for said moneys.

A temporary restraining order was issued, to which defendant Rule made return assigning seventeen reasons why plaintiff should not maintain its bill and asked that the restraining order be
59 dissolved.

On the twenty-second day of April, 1901, plaintiff filed its motion for the relief prayed for, notwithstanding the return of defendant Rule, as follows:

"Now comes the plaintiff in the above entitled cause, by its solicitor, and moves the court here to continue its restraining order now in force, and to proceed with all convenient speed at its convenience to hear and determine the plaintiff's bill of interpleader therein filed, notwithstanding the return of Virgil Rule, defendant, filed in this cause April 19, 1901, for the following reasons, to-wit:

"*First.* Because this court has full and complete jurisdiction over this matter.

"*Second.* Because plaintiff is entitled to the relief here prayed for, notwithstanding said return.

"*Third.* Because said return states no facts which would deprive the plaintiff of the relief prayed for.

"*Fourth.* Because unless the relief here prayed for is granted to plaintiff, said defendants, Virgil Rule and Alexander Flannigan, will immediately proceed to defeat said bill of interpleader, by compelling the plaintiff, a mere stakeholder, to pay the sum twice out of the sum in plaintiff's hands.

"*Fifth.* Because the plaintiff is entitled to the relief here prayed for, both at law and in equity, upon the facts stated in its third amended petition, and admitted in the return of said Virgil Rule."

On the same day defendant Flannigan, filed the following separate answer, to-wit:

"Now this day comes the defendant Alexander Flannigan, having entered his voluntary appearance in this cause, by his attorney, to plaintiff's third amended petition, and says: He admits each and every allegation set forth in the petition of the plaintiff.

"Defendant further says that by virtue of said judgment of Peter Tourville against The Wabash Railroad Company, to the use of Alexander Flannigan, obtained in Illinois, as stated in plaintiff's third amended petition, this defendant thereby obtained a lien upon said sum of $81.98 prior in right to all liens, if any, upon said sum or sums claimed by Peter Tourville or his assignee, Virgil Rule, from the Wabash Railroad Company, and is, therefore, by virtue of said lien, entitled to the payment of said sum from the Wabash Railroad Company.

Wherefore, this defendant, under the facts stated in the
60 plaintiff's third amended petition and this defendant's amended answer, says that he is entitled to said sum of $81.98 mentioned, for which, with his costs, he prays judgment."

On April 29, 1901, the court dissolved the temporary injunction and entered judgment against plaintiff, denying the relief prayed

for. After an unsuccessful motion for new trial, plaintiff appealed. After the appeal was perfected, the plaintiff obtained in vacation an order from one of the judges of this court, restraining the collection of an execution, which defendant Rule had sued out on the Tourville judgment. A motion to dissolve this restraining order has been filed in this court.

Counsel for appellant has incorporated in his statement and brief a history of its litigation with Tourville and Flannigan. This history, while interesting as history, has no place in the record beyond what is set forth in the bill for an interpleader and what appears in the opinions of the appellate courts of this State, to which the Tourville case was taken by successive appeals.

From the bill for an interpleader it appears that Tourville began a suit against the appellant on June 10, 1891, before a justice of the peace and from the court reports it appears that on March 26, 1895, this judgment was made final by the decision and mandate of the St. Louis court of appeals (61 Mo. App. 534, S. C. 148 Mo. L. C. 624).

The bill for an interpleader alleges that Flannigan begun his suit by attachment in the State of Illinois and garnished the appellant on June 14, 1895, so that it affirmatively appears when the Flannigan suit was commenced Tourville had reduced his claim to a final judgment and that his cause of action was merged or
61 drowned in the judgment. Cooksey *v.* Railroad, 74 Mo. 477; Freeman on Judgments, (4 ed.) sec. 215. At the time Flannigan commenced his suit the old debt had ceased to exist and was not thereafter the subject of garnishment under the laws of this State. Drake on Attachments, (7 ed.) 622; Tourville *v.* Wabash R. R. Co., 148 Mo. 624. But it appears that a different rule prevails in the State of Illinois and that an indebtedness upon which a judgment has been rendered is the subject of garnishment, Minard *v.* Lawler, 26 Ill. 301; Luton *v.* Hoehn, 72 Ill. 81; Allen *v.* Watt, 79 Ill. 284, and that this may be done even where the judgment was rendered by one court and the garnishment proceedings were in another and inferior court. Luton *v.* Hoehn, *supra.*

In Allen *v.* Watt, *supra*, it was held that where a debt has been recovered from a debtor by garnishee process under attachment proceedings in a court of competent jurisdiction in another State the recovery is a protection in Illinois against his original creditor and the fact that the debt may have been put into a judgment does not change the rule and the court granted a perpetual injunction restraining the collection of the judgment recovered by the debtor in the Illinois court.

In Drake on Attachments, (7 ed.) sec. 621, it is said that where the action is pending in one court and the garnishment in another, and the courts are of different jurisdictions, that which was first instituted will be sustained; and that when the action is in such a situation that the garnishee, if charged, cannot avail himself of the judgment in attachment as a bar to recovery in the action, he can-
62 not be held as a garnishee. To the same effect see 14 Am. & Eng. Ency. of Law, (2 ed.) p. 775, and foot note 3.

Tourville had recovered his judgment for the debt when the Flannigan suit by attachment was commenced, which judgment was never reversed and, under the foregoing authorities, the appellant could have successfully interposed the Flannigan judgment as a bar to a recovery against it as garnishee in the Flannigan suit. The bill of interpleader does not allege that this defense, or any other defense, was interposed by the appellant in the Flannigan suit. Appellant seems to have contented itself by trying to establish an offset of forty-three dollars and twenty-eight cents to the Tourville claim it had paid on a prior void judgment rendered against it as garnishee in an Illinois court in favor of Flannigan in his first attachment suit against Tourville. Having failed to establish the offset it seems to us that it cannot now come into a court of equity and assume the innocent role of a stakeholder and compel Tourville to re-litigate his claim which he has successfully reduced to a judgment at law.

A stakeholder in equity is defined to be "one who has in his hands money or other property claimed by several others." Bouvier's Law Dict. A debtor may occupy the situation of a stakeholder in equity when he acknowledges that he owes the debt; that it is due to one or the other of several claimants but that he is not advised to which of them, and when he deposits the money in court and asks that the contesting claimants may litigate their claims between themselves. The appellant is not in this situation. It does not occupy the equitable ground of a stakeholder. It has
63 contested the Tourville claim through every court to which it could resort and having lost in that contest it is in no position to ask that Tourville or his assignee be compelled to re-litigate his claim with a stranger to the original suit. But it is contended by appellant that as Flannigan voluntarily appeared in court and filed his answer claiming priority to the so called fund that the court erred in dismissing the bill. The bill was to compel Flannigan and Rule, assignees of Tourville, to interplead. Flannigan's willingness to submit his person and judgment to an interpleader did not have the effect to give the court jurisdiction and power to compel Rule to submit his judgment also to an interpleader nor deprive him of the right to demur to the appellant's bill on the ground that it stated no equity nor deprived the court of the right to pass on his return in the nature of a demurrer. Flannigan cannot alone interplead nor can he force Rule to join in an interpleader. Two things were necessary to authorize the court to order an interpleader. First, an appropriate bill for that purpose and, second, jurisdiction of the parties making adverse claims to the thing to be interpleaded for. The court had jurisdiction of the parties but it ruled that the bill for the interpleader did not state facts sufficient to authorize it to order the parties to interplead. If this ruling of the court was correct then it rightfully dismissed the bill.

The Tourville and Flannigan judgments are both judgments at law against the same judgment debtor and for the same debt. Can

the defendant in such circumstances compel its judgment creditors to come into a court of equity and interplead for the debt, is
64 the question raised by the pleadings. A judgment is a finality. It ends the controversy as between the parties and it would seem, on principle, the party in whose favor a judgment has been rendered should not be called upon by the judgment creditor a second time to make good his claim unless the integrity of the judgment itself is directly attacked for fraud, or that other claimants of the debt or fund, in whose favor no judgment has been rendered, make claim to the fund. We have been cited to no case where it has been held that ordinary judgment creditors having a common debtor have ever been required to come into a court of equity and interplead for the purpose of determining which of the two judgments should be paid.

Priorities may be adjudicated by an interpleader's bill where there are conflicting claims as to which of several claimants should be first paid out of a particular fund or from the sale of specific property and on which the claimants claim to have legal or equitable liens; but ordinary judgment creditors are not in this class. That they cannot be compelled to interplead at the instance of a common debtor is, we think, supported both on authority and reason. Cheever *v.* Hodgson, 9 Mo. App. 565; Dodds *v.* Gregory, 51 Miss. 351; Woodruff *v.* Taylor, 20 Vt. 65; Provident Savings Institution *v.* White, 115 Mass. 112. The cases of Hamilton *v.* Marks, 5 De Gex & Smale, 638; Johnson *v.* Maxey, 43 Ala. 521; Mills *v.* Townsend, 109 Mass. 115; Newhall *v.* Kastens, 70 Ill. 156; Building Association *v.* Joy, 56 Mo. App. 433, cited and relied on by appellant do not meet the difficulty in the case at bar. In each of the above cases the debtor occupied the situation
65 of a stakeholder and as to some of the claimants there had been no judgment. The non-judgment claimants have never had their day in court and were therefore in a situation to come into a court of equity and set up their claims against a judgment claimant; but here both claimants have had their day in court and appellant has had its day and opportunity in court to make its defense to both of the claims. It defended the Tourville suit but, for aught that appears in the bill of interpleader and in the pleadings, the defense it might have successfully made as garnishee in the Flannigan suit it did not make and it is too late now to require Rule, the assignee of Tourville, to come into a court of equity and interplead for a debt that has been reduced to a final judgment and to show his superior claim by showing priority of suit and priority of judgment over the Flannigan judgment, which the appellant might have done as garnishee as a bar to that suit. It may be that under the ruling in Allen *v.* Watt, *supra*, the appellant, after paying the Tourville judgment, may successfully enjoin the collection of the Flannigan judgment in the courts of Illinois, but we are clearly of opinion that it is not entitled to the relief prayed for.

On the showing it has made by its bill for an interpleader, the

temporary restraining order is dissolved and the judgment is affirmed.

C. C. BLAND.

Barclay and Goode, JJ., concur.

A true copy of the opinion:
Witness my hand and the seal of the St. Louis court of appeals, this thirteenth day of May, 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

66 I, John H. Murphy, clerk of the St. Louis court of appeals, within and for the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the proceedings had in the above entitled cause in said court as fully as the same remains of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of St. Louis, this twelfth day of July, 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

67 And afterwards, to-wit, on the *12th* day of *June*, 1902, plaintiff presented the following petition to Judge Charles C. Bland, presiding judge of the St. Louis court of appeals:—

Petition.

The petition of the Wabash Railroad Company respectfully shows that on the 10th day of June, A. D. 1902, the St. Louis court of appeals of the State of Missouri, rendered a final judgment against your petitioner in a certain cause wherein The Wabash Railroad Company was plaintiff, and Alexander Flannigan and Virgil Rule were defendants, denying to your petitioner the right to interplead, and for costs, and awarded execution thereon, as will appear by reference to the record of the proceedings in said cause, and that on the 10th day of June, A. D. 1902, said court refused to transfer said cause to the supreme court of Missouri, and overruled your petitioner's motion to so transfer said cause, whereby said decision of said St. Louis court of appeals became final, as the court of last resort therein and that by reason of its ruling is the highest court of said State in which a decision in said suit could be had. And your petitioner claims the right to remove said cause to the Supreme Court of the United States by writ of error, under section 709 of the Revised Statutes of the United States, because article 4, section 1, of the Constitution of the United States requires that full faith and credit shall be given in each State to the judicial proceedings of every State and it affirm-

atively appears in the bill filed in this cause (and is admitted in the demurrer of the defendant and by the answer of the other) and also in the motion for rehearing filed in the court below, that the two judgments submitted for a determination of their respective priority, were rendered in different States and against a common fund and against petitioner solely, and because the record herewith submitted shows that the decision of the trial court and its affirmance in this court "*necessarily involved*" an adverse adjudication of
68 the equal right and dignity of the Illinois judgment, guaranteed by the Constitution, to satisfaction out of the common fund against which it and the Missouri judgment were rendered. Wherefore it appears both the judgment of the trial court and the court of appeals were against the right and privilege, under said section of the Constitution, claimed by petitioner and your petitioner was denied a privilege or immunity secured to him by the Constitution of the United States as appears from the necessary legal effect of both the judgment of the trial court and this honorable court and as is fully shown from the records of the proceedings in said cause which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation and supersedeas; and your petitioner will ever pray.

GEORGE S. GROVER,
Attorney for Plaintiff.

Let the writ of error issue as prayed.

And afterwards, to-wit, on the *12th* day of *June*, Charles C. Bland, presiding judge of the St. Louis court of appeals overruled said petition by the following memorandum:

In the St. Louis Court of Appeals, March Term, 1902.

WABASH RAILROAD CO., Appellant,
v.
ALEXANDER FLANNIGAN ET AL., Respondents. } No. 8267.

In the matter of the application of appellant for a writ of error to the United States Supreme Court.

In Wabash Railroad Company *v.* Tourville, 179 U. S. 322
69 the judgment herein involved came under review. The validity of the Tourville judgment, as we understand the opinion, was sustained and its priority over that of Flannigan was adjudged. In the face of this decision we deny the writ.

C. C. BLAND,
Presiding Judge.

I, John H. Murphy, clerk of the St. Louis court of appeals, within and for the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the petition presented to the Hon. Charles C. Bland, presiding judge of said court for a writ of error herein together with his order refusing the same, as fully as the same are now on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court this first day of August, 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

70 *To* the Supreme Court of the United States of America.

The Petition of THE WABASH RAILROAD COMPANY (a Corporation) for a Writ of Error, Directed to the St. Louis Court of Appeals of the State of Missouri, to Bring before the Supreme Court the Case of The Wabash Railroad Company (a Corporation), Interpleader and Appellant,

against

ALEXANDER FLANNIGAN and VIRGIL RULE, Defendants and Respondents.

The petitioner, The Wabash Railroad Company, respectfully shows to this court, as follows:—

1. Your petitioner is and was at all the times hereinafter mentioned, a consolidated corporation duly organized and created as such under and by virtue of the laws of the States of Ohio, Illinois, Missouri, Michigan and Wisconsin, and as such has capacity to sue and is liable to be sued; and that as such corporation it is a citizen of the State of Ohio.

2. That your petitioner became indebted to one Peter Tourville on the 1st day of June, 1891, in the sum of eighty-one dollars and ninety-eight cents ($81.98) earned as wages as an employee of your petitioner, which said sum was due and payable to said Tourville at the office of your petitioner's treasurer, in the city of St. Louis, Missouri.

3. That on the 10th day of June 1891, said Tourville instituted a suit before a court of competent jurisdiction in the city of St. Louis, State of Missouri against your petitioner, seeking to recover of your petitioner the sum of eighty-one dollars and ninety-eight cents ($81.98) due him as wages earned as aforesaid. That such proceedings were had in said cause; that judgment was
71 therein rendered in favor of said Tourville and against your petitioner for the said sum of eighty-one dollars and ninety-eight cents ($81.98) on account of said wages. That your petitioner appealed said cause to the various courts having appellate jurisdiction of said cause in the State of Missouri and finally the same was, by writ of error, considered by this honorable court and the said

judgment in favor of said Tourville was by this honorable court on the third day of December, 1900, in all things affirmed.

4. That on the 1st day of April, 1895, Alexander Flannigan, a creditor of Peter Tourville, instituted an attachment proceedings against said Tourville before James A. Wyatt, a justice of the peace for St. Clair county in the State of Illinois, who had jurisdiction of the subject matter of the suit and of the person of said Tourville. That in said cause, your petitioner was required to answer and appear as garnishee in response to a writ of garnishment duly issued by said justice. That such other proceedings were had in said cause so that on the 14th day of June, 1895, judgment was rendered therein in favor of the said Flannigan and against the said Tourville, and also against your petitioner as garnishee, for the sum of eighty-one dollars and ninety-eight cents ($81.98) being the sum so owing by your petitioner to said Tourville. That said judgment is and was a final judgment. That no appeal was taken from said judgment by your petitioner, because said judgment was pursuant to the laws of Illinois.

5. That your petitioner at no time owed said Tourville more than the sum of eighty-one dollars and ninety-eight cents ($81.98), and that the said final judgment against your petitioner for said sum in favor of said Flannigan, and the final judgment of the said
72 Tourville against your petitioner were for one and the same debt.

6. During the month of February, 1901, the said Tourville assigned his said judgment against your petitioner to Virgil Rule.

7. That on the 20th day of December, 1900, your petitioner filed in the circuit court of the city of St. Louis, Missouri, its bill of interpleader against the said Flannigan and the said Rule, a copy of which is contained in the annexed transcript of the record of said cause to which your petitioner prays leave to refer, and asks that the same may be considered as a part hereof. That among other things prayed for in said bill of interpleader, your petitioner prayed that inasmuch as he did not know and could not determine which one of said claimants for said sum of eighty-one dollars and ninety-eight cents ($81.98) was entitled thereto, and that inasmuch as your petitioner was in danger of having to pay the said sum twice, that it be permitted to pay said sum into court and that it be discharged and relieved from further liability on account of said indebtedness to said Tourville; that said Flannigan and Rule be required to interplead in said cause and that the court, by its judgment, determine which of said claimants was entitled to said sum.

8. That the said circuit court duly summoned the said Virgil Rule to appear in said cause; and that said Flannigan entered his voluntary appearance therein.

9. That such proceedings were had in said last mentioned cause; that on the 15th day of April, 1901, by leave of court, your petitioner was permitted to file his third amended petition, containing the same prayer as the original petition a copy of which petition appears in the transcript of the record of said cause hereto annexed, to which

your petitioner asks leave to refer and prays that the same may be considered as if fully embodied herein.

10. That the said court, pursuant to the prayer of your petitioner's said third amended petition, on the 15th day of April, 1901,
73 issued an order temporarily restraining the said Flannigan and the said Rule from attempting to enforce their respective judgments pending said cause.

11. That on the 22nd day of April, 1901, the said Flannigan filed in said cause his answer to the said third amended petition of your petitioner, and by his said answer admitted all the allegations contained in said petition, and claimed said fund and stated the facts on which his claim was founded, a copy of which answer is contained in the annexed transcript of the record of said cause, to which your petitioner begs leave to refer and prays that the same may be considered as if embodied herein.

12. That on the 19th day of April, 1901, the said Rule filed in said cause a demurrer to your petitioner's third amended petition.

13. That on the 29th day of April, 1901, the said cause coming on to be heard in said court and the same having been submitted on the pleadings, the said court entered a judgment for the defendants in said cause, the said Flannigan and Rule, denying the prayer of the bill of interpleader and dissolving the temporary injunction.

14. Your petitioner thereupon perfected an appeal from said judgment to the St. Louis court of appeals of the State of Missouri; where said cause came on for hearing at the October term, 1902; that on the 13th day of May, 1902, said cause having theretofore been submitted on briefs and arguments was decided by said court of appeals, adverse to your petitioner and the said judgment of the circuit court was, by the said court of appeals, in all things affirmed.

15. Thereafter, in due time, your petitioner filed a motion for a rehearing in said cause, which was by said court of appeals overruled.

16. That immediately thereafter, your petitioner filed in said cause, a motion praying that the said cause be transferred to the supreme court of Missouri, which motion was by said court overruled.

74 17. That thereafter, on the eighteenth day of June, 1902, your petitioner filed in the supreme court of Missouri, an application and petition for a writ of certiorari, directed to said St. Louis court of appeals, requiring said cause to be transferred to said supreme court. That on the 28th day of June, 1902, said petition and application was, by the said supreme court, overruled and denied.

Your petitioner has hereto annexed a transcript of all the proceedings in said cause, to which it asks leave to refer, and asks that the same may be considered as a part hereof.

18. That the said St. Louis court of appeals is the highest court of law and equity of the said State of Missouri in which a decision could be had in said suit between your petitioner and the said Flannigan and Rule.

19. Your petitioner charges and avers that in said suit while the same was pending in said circuit court and in said court of appeals, the construction of the following clauses of the Constitution of the United States was drawn in question, viz:

The following clause of section 1, article IV: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Section 11, article IV: "The citizens of each State shall be entitled to all the privileges and ammunities of citizens in the several States."

The following clause of section 1, article XIV, of amendments to the Constitution: "No State shall make or enforce any law which shall abridge the privileges or ammunities of citizens of the United States nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

20. Your petitioner says that the decisions of courts on said clauses of the Constitution in said cause were against the
75 rights, title, privilege and exemption specially set up and claimed under said clauses of said Constitution by your petitioner.

Wherefore, your petitioner prays for the allowance of a writ of error, directed to the said St. Louis court of appeals, requiring the said St. Louis court of appeals to send the record and proceedings aforesaid in said cause with all things concerning the same, to this honorable court that the same may be inspected and that this honorable court may cause or order to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done, and also that an order be made fixing the amount of security which your petitioner shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in said St. Louis court of appeals be suspended and stayed until the determination of said writ of error by this honorable court.

GEORGE S. GROVER,
JAMES L. MINNIS,
Attorneys for Wabash Railroad Company.

STATE OF MISSOURI, } ss:
City of St. Louis, }

George S. Grover, being duly sworn, on his oath says, that he is the attorney for the petitioner and makes this affidavit on its behalf. That he has read the foregoing petition, and believes that the facts stated therein are true.

GEORGE S. GROVER.

JOSEPHINE K. BAKER,
Notary Public.

{ Seal of Josephine K. Baker, Notary Public, City of St. Louis, Mo. Commission Expires Jan. 23, 1905. }

My commission expires Jan. 23, 1905.

JULY 21ST, 1902.

Let writ of error issue as prayed for.

DAVID J. BREWER,
Associate Justice Sup. Ct. U. S.

76 [Endorsed:] In the Supreme Court of the United States. The Wabash Railroad Company *vs.* Virgil Rule and Alexander Flannighan. Application for a writ of error.

77 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the St. Louis court of appeals in the State of Missouri, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Wabash Railroad Company, appellant, and Alexander Flannigan and Virgil Rule, respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause
78 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

United States, the 26th day of July, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

79 UNITED STATES OF AMERICA, ss:

To Alexander Flannigan and Virgil Rule, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the St. Louis court of appeals, in the State of Missouri, wherein The Wabash Railroad Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 26th day of July, in the year of our Lord one thousand nine hundred and two.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

80 On this 28th day of July, in the year of our Lord one thousand nine hundred and two, personally appeared before me, the subscriber, —— —— and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — day of ——. A. D. 190–.

—— ——.

Service of the within writ is hereby acknowledged this 28th day of July 1902.

HENRY W. BLODGETT,
Attorney of Record for Alexander Flannigan, Defendant in Error.

Executed the within writ in the city of St. Louis, this 29" day of July 1902, by delivering a true copy of same to Virgil Rule, one of the defendants in error, of the within cause.

THOS. E. BARRETT,
Marshal St. Louis Court of Appeals.

81 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, John H. Murphy, clerk of the St. Louis court of appeals, within and for the State of Missouri aforesaid, in obedience to the mandate of the within writ, under the seal of said court, distinctly and openly, transmit a full, true and complete transcript of the record and proceedings, with all things concerning the same to the honorable Supreme Court of the United States as fully as the same remain of record and on file in my office.

Seal of St. Louis Court of Appeals, Mo.

In testimony whereof, I hereto set my hand and affix the seal of said court at office in the city of St. Louis, this first day of August, 1902.

JOHN H. MURPHY, *Clerk.*

Endorsed on cover: File No. 18646. Missouri, St. Louis court of appeals. Term No. 115. The Wabash Railroad Company, plaintiff in error, *vs.* Alexander Flannigan and Virgil Rule. Filed August 16, 1902.